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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 HANIF ABDULLAH MUJAHID,

7 Plaintiff,

8 v.

9 KELLY J. CUNNINGHAM, MARK DAVIS,
10 DONALD GAUNTZ, RANDY PECHEOS,
11 KRISTINA SPARKS, CARISSA
BONNEMA, JEREMY P. DORFNER, LAN
BITOW, and ALEC BRIAN,

12 Defendants.

No. C10-5916 BHS/KLS

ORDER DENYING PLAINTIFF'S
MOTION TO APPOINT COUNSEL

13 This civil rights action has been referred to United States Magistrate Judge Karen L.
14 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
15 Plaintiff's motion for the appointment of counsel. ECF No. 54. Having carefully reviewed
16 Plaintiff's motion, and balance of the record, the Court finds, for the reasons stated below, that
17 Plaintiff's motion should be denied.

18
19 **DISCUSSION**

20 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
21 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*
22 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
23 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may
24 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
25 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
26 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
7 1101, 1103 (9th Cir. 2004).

9 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
10 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
11 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
12 facts during litigation. But, if all that was required to establish the complexity of the relevant
13 issues was a demonstration of the need for development of further facts, then practically all cases
14 would involve complex legal issues. *Id.*

16 Plaintiff states that he requires the appointment of counsel because this is a complex case,
17 he has limited knowledge of the law, he cannot afford counsel, and documentary and
18 testamentary discovery is necessary. ECF No. 55, pp. 1-2 (Affidavit in Support of Motion for
19 Appointment of Counsel). Plaintiff filed his complaint *pro se* and has demonstrated an adequate
20 ability to articulate his claims *pro se*. Plaintiff claims that employees of the Special
21 Commitment Center violated his rights in handling his mail. This case does not involve complex
22 facts or law.

24 The Court finds no exceptional circumstances in this case. While Plaintiff may not have
25 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding
26 investigation and discovery are also not exceptional factors, but are the type of difficulties

1 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to
2 the parties through the Federal Rules of Civil Procedure during the litigation process.

3 Moreover, Plaintiff has not shown a likelihood of success on the merits.

4 Accordingly, Plaintiff's motion to appoint counsel (ECF No. 54) is **DENIED**. The Clerk
5 is directed to send copies of this Order to Plaintiff.

6
7 **DATED** this 2nd day of September, 2011.

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9 
10 Karen L. Strombom
United States Magistrate Judge